
Exhibit A

Tab 7



Deposition of:
Lorin Hitt, Ph.D.

December 22, 2021

In the Matter of:
**Won, Wesley et al. v. General Motors,
LLC**

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WESLEY WON, et al., individually) Civil Action No.
and on behalf of all others) 2:19-cv-11044
similarly situated,)
)
Plaintiffs,)
)
v.)
)
GENERAL MOTORS, LLC,)
)
Defendant.)
-----)

REMOTE PROCEEDINGS OF THE
VIDEOTAPED DEPOSITION OF LORIN MOULTRIE HITT, PH.D.
WEDNESDAY, DECEMBER 22, 2021

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

REPORTED BY NANCY J. MARTIN
CSR. NO. 9504, RPR, RMR

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FOR THE EASTERN DISTRICT OF MICHIGAN
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WEDNESDAY, DECEMBER 22, 2021
- - -

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Videotaped Remote Deposition of LORIN MOULTRIE
HITT, PH.D., beginning at 10:10 a.m., before Nancy J.
Martin, a Registered Merit Reporter, Certified
Shorthand Reporter.

1 Q. And what counsel?

2 A. Kirkland & Ellis counsel, Mr. Pixton

3 Mr. Ribot.

4 Q. And when you said "research team," who is
5 that?

6 A. Those are folks at Cornerstone Research.

7 Q. And who are those folks at Cornerstone
8 Research?

9 A. So the -- it would be Samid Hussain, Anna
10 Shakatko, Collin Shanks, Fang Guo were the core team,
11 and there may have been others involved at various
12 times.

13 Q. Okay. Before I go further, let me make sure
14 I understand all the spellings of their names.

15 I think I got Collin Shanks. Is it S-c-h
16 or S-h?

17 A. S-h, I believe.

18 Q. Okay. And is Samid Hussain S-a-m-i-d,
19 H-u-s-s-e-i-n?

20 A. a-i-n, I believe.

21 Q. Okay. S-a-m-i-d?

22 A. S-a-m-i-d.

23 Q. Okay. I missed the third name that you
24 mentioned.

25 A. Anna Shakatko I believe was the third one.

1 Q. Can you spell her name.

2 A. A-n-n-a, S-h-a-k-a-t-k-o, I believe. I may
3 be getting that wrong.

4 Q. And I think the third -- or the last name was
5 Fang Guo.

6 A. Fang, F-a-n-g, G-u-o.

7 Q. Okay. And they are all folks at Cornerstone?

8 A. Yes.

9 Q. And when you said "research team," did they
10 work with you on your report in this case?

11 A. They performed analysis and research tasks at
12 my direction, yes.

13 Q. So they did work with you on your report on
14 this case?

15 A. Yes. As I described, they performed research
16 at my direction.

17 Q. Okay. What -- do you know the educational
18 background of Samid Hussain?

19 A. I think he's a Ph.D. economist.

20 Q. And what about Collin Shanks?

21 A. That, I don't know.

22 Q. What about Fang Guo?

23 A. I also don't know.

24 Q. What about Anna Shakatko?

25 A. I believe she's an M.B.A., but I'm not sure.

1 Q. Okay. Did you in this case load up in Our
2 Studio and run the code?

3 A. Yeah. I ran one of the modules, but it was
4 the research team that was primarily responsible for
5 executing the code and doing the various research
6 tasks related to the code.

7 Q. Okay. So who at the research team
8 specifically worked on this code? Because as we all
9 kind of know already, there's some questions about the
10 code for the simulation. I'd like to know who was
11 doing that work so I can ascertain what their
12 background was and the time they spent on this
13 project.

14 Can you give me that person's name?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So as I described earlier, the
17 person who was -- at least I would identify as most
18 responsible for the simulation code would be Collin
19 Shanks who was working on that. He likely had other
20 people assisting that I did not interact with. So I
21 don't know for certain.

22 BY MR. MCNAMARA:

23 Q. Do you know how many likely people he had
24 interacting with him on that?

25 MR. PIXTON: Object to form.

1 THE WITNESS: I don't know.

2 BY MR. MCNAMARA:

3 Q. Do you know what their educational
4 backgrounds were?

5 MR. PIXTON: Object to form.

6 THE WITNESS: I don't know.

7 BY MR. MCNAMARA:

8 Q. Do you know how much time he spent working on
9 the market simulation code?

10 A. I don't know.

11 Q. Do you know how much time he spent working on
12 the market simulation that Mr. Eichmann did in this
13 report?

14 A. No, I don't know. I generally don't know how
15 Cornerstone allocates their time.

16 Q. With regards to hedonic analysis, I think you
17 think -- let me try that again.

18 With regards to hedonic analysis and Fang
19 Guo, do you know if Fang Guo had anyone supporting on
20 that analysis?

21 MR. PIXTON: Objection. Form.

22 THE WITNESS: So I would believe so, but I
23 don't know for certain.

24 BY MR. MCNAMARA:

25 Q. Okay. Do you know how much time Fang Guo

1 spent on the hedonic analysis part of Mr. Eichmann's
2 report?

3 A. No. As I said earlier, I generally don't
4 know Cornerstone's time allocation.

5 Q. Okay. What, if anything, did Samid Hussain
6 do with respect to supporting you in your expert
7 report in this case?

8 A. He participated in discussions with the team.

9 Q. Any specific part of your report you can
10 point to Mr. Hussain's contribution on?

11 MR. PIXTON: Object to the form.

12 THE WITNESS: I think I characterized it
13 broadly, which is that he was involved in discussing
14 the report at a high level.

15 BY MR. MCNAMARA:

16 Q. You did characterize it broadly, that's why I
17 went more specifically.

18 What specifically, if anything, did Samid
19 Hussain, who is a Ph.D. in economics and the only one
20 whose background you really understood, what did he do
21 on this case?

22 MR. PIXTON: Object to the form.

23 THE WITNESS: I believe I answered that
24 question, which is he participated in discussions
25 about the -- regarding the report across all the

1 areas.

2 BY MR. MCNAMARA:

3 Q. Okay. And I think you said Anna Shakatko was
4 an M.B.A.?

5 A. I believe so.

6 Q. So what -- can you tell me how Anna supported
7 you in your report in this case?

8 A. She was also involved in broader discussions
9 of the case and involved in managing some of the other
10 folks.

11 Q. Anything else than broader discussions?
12 Discussions as to what? Where was her M.B.A. at all
13 used?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So when working with the
16 research team, there are certain people who are
17 working on specific tasks and certain people who are
18 responsible at a higher level. Anna is one of the
19 folks responsible at a high level that would have
20 participated in discussion, probably more related to
21 the market simulation, but also more broadly.

22 BY MR. MCNAMARA:

23 Q. Do you know how much time Ms. Shakatko worked
24 on the case?

25 A. No. As I said before, I generally don't know

1 Cornerstone's time allocations.

2 Q. Okay. And aside from the folks you named --
3 Samid, Collin, Fang, and Anna -- who else, if anyone,
4 at Cornerstone do you recall supported you in your
5 work in this case?

6 MR. PIXTON: Object to the form.

7 THE WITNESS: There were -- at times there
8 were analysts who were involved. I don't recall their
9 full names, but people I met along the way.

10 BY MR. MCNAMARA:

11 Q. Can you give me any of the first names or
12 last names, whatever part of the name you remember?

13 A. I think one of the analysts was Levi
14 Monihume, I believe, if I'm getting that correctly.

15 Q. Anyone else?

16 MR. PIXTON: Same objection.

17 THE WITNESS: There were others, but I don't
18 recall. I don't recall their names right now.

19 BY MR. MCNAMARA:

20 Q. Can you give me a number of people at
21 Cornerstone that assisted you along the way on your
22 expert report in this case?

23 MR. PIXTON: Object to form.

24 THE WITNESS: Not until I can -- I recall
25 perhaps two or three more people that I interacted

1 with at some point, but that wouldn't be -- that's an
2 estimate. That's not a hard number.

3 BY MR. MCNAMARA:

4 Q. You've worked with Cornerstone over the years
5 in expert work; correct?

6 A. Yes.

7 Q. How long have you worked with Cornerstone
8 doing expert work in support -- sorry, in supporting
9 your expert work litigation?

10 A. 20 -- approximately 20 to 22 years, something
11 like that.

12 Q. And is Mr. -- well, let's try it this way:
13 Did you work with anyone on this project who you've
14 worked with in the past?

15 MR. PIXTON: Object to form.

16 THE WITNESS: Yes.

17 BY MR. MCNAMARA:

18 Q. Who is that?

19 A. Samid.

20 Q. And I think -- go ahead. Sorry.

21 A. Samid, Anna. I believe Levi had been
22 involved in a previous case as an analyst. Oh,
23 actually, I forgot somebody. Todd Kumar was involved
24 in this too, and I've worked with him a fair amount in
25 the past.

1 the 8-speed transmissions?

2 A. I believe it was within a few months before,
3 but I don't really recall. I don't believe I have a
4 record of when that was.

5 Q. Fair to say you didn't do any work on this
6 matter before October 5, 2021?

7 MR. PIXTON: Object to form.

8 THE WITNESS: Yes, that's correct. Other
9 than review the Complaint, I didn't do any billed work
10 on this case. It is possible I reviewed the Complaint
11 before I discussed it with the Cornerstone folks, but
12 no active work on it.

13 BY MR. MCNAMARA:

14 Q. Do you know -- fair enough. Do you know if
15 Cornerstone had begun work on this matter before
16 October 5, 2021?

17 MR. PIXTON: Objection. Form.

18 THE WITNESS: That, I don't know. I think --
19 I suspect I interacted with them and -- you know, sort
20 of understanding the case. I don't know if they were
21 actively doing anything else.

22 BY MR. MCNAMARA:

23 Q. When did you start working on your report in
24 this case?

25 A. Mid-October, shortly after the retainer

1 to go back going off only this -- the first time I had
2 a discussion with Cornerstone on this was the 15th,
3 anything other than scheduling.

4 BY MR. MCNAMARA:

5 Q. Okay. Do you know what, if anything, had
6 been done by Cornerstone with respect to this case by
7 the time they sent you the materials that you just
8 described?

9 MR. PIXTON: Object to form.

10 THE WITNESS: No. I don't know what they
11 might have been doing.

12 BY MR. MCNAMARA:

13 Q. Well, you said they worked with you at your
14 direction. What did they do before you started
15 directing? Do you know?

16 MR. PIXTON: Object to form.

17 THE WITNESS: That, I don't know. The only
18 thing I'm aware of was the preliminary discussion that
19 I mentioned before that might have occurred several
20 months before and, you know, collecting the materials
21 and making them available.

22 BY MR. MCNAMARA:

23 Q. For the work on this case, did Cornerstone
24 work solely at your direction, or do you know if they
25 did additional work that you may not have directed?

1 MR. PIXTON: Objection to form.

2 THE WITNESS: I don't know.

3 BY MR. MCNAMARA:

4 Q. Do you know if Cornerstone has done any
5 analysis, simulations, hedonic regressions that
6 they've done on their own and not at your direction?

7 MR. PIXTON: Object to the form.

8 THE WITNESS: I don't know the scope of
9 Cornerstone's involvement beyond my own report.

10 BY MR. MCNAMARA:

11 Q. Okay. Are there any analyses that were done
12 by Cornerstone that you're aware of, whether you
13 directed or not, that are not reflected in your
14 report?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So I asked them to do a variety
17 of things. The ones that are relevant got
18 incorporated in the report.

19 BY MR. MCNAMARA:

20 Q. Okay. All right. We'll get to your report
21 in a second. I just want to find out, though, are
22 there any things they did that you may not have asked
23 them to do that you became aware of that are not in
24 your report?

25 MR. PIXTON: Object to form.

1 THE WITNESS: Not that I'm aware of. I don't
2 know if they did other things related to my report or
3 not. I do understand they're supporting another
4 expert, but I wasn't involved in that in any way.

5 MR. MCNAMARA: Okay. Let me -- with respect
6 to Exhibit 316 -- why don't I just show you. Just to
7 finish out, can I ask you to look at Exhibit 317.

8 (Deposition Exhibit 317 was marked for
9 identification.)

10 BY MR. MCNAMARA:

11 Q. The first line where it says, "Discussed
12 Hedonic/follow up," can you tell me who you discussed
13 it with?

14 MR. PIXTON: Object to form.

15 THE WITNESS: Again, I don't recall. I would
16 suspect it would be Fang, but I'm not sure. That
17 would most likely be the case.

18 BY MR. MCNAMARA:

19 Q. Can you tell me what you mean by "Worked with
20 Eichmann simulation, 3.4 hours"?

21 MR. PIXTON: Object to form.

22 THE WITNESS: That may have been some of my
23 running the simulation and working through the code on
24 my own.

25 BY MR. MCNAMARA:

1 BY MR. MCNAMARA:

2 Q. Well, let me ask the question your way then.
3 In the 37 times you've testified, can you tell me how
4 many times you've responded to a damages model in a
5 class action?

6 A. I can go through it.

7 (The witness reviewed the document(s).)

8 THE WITNESS: I count somewhere around 18.

9 BY MR. MCNAMARA:

10 Q. In those 18 times you responded to a class
11 action model, did you ever agree that a class action
12 damages model was sufficient?

13 MR. PIXTON: Object to the form.

14 THE WITNESS: So I don't think it's generally
15 my assignment to make the final determination, but in
16 all those cases I was asked to evaluate damages
17 models, and I found issues with them that I described
18 in the reports I provided.

19 BY MR. MCNAMARA:

20 Q. When you say "found issues," what do you
21 mean?

22 A. So either they were inconsistent with
23 economics or did not lead to the conclusions that they
24 were trying to draw or could not be used to give an
25 individualized number for damages given the way that

1 they were set up. Those are some examples.

2 Q. Have you ever testified on behalf of
3 consumers in a class action case where you found a
4 model that answered all the questions and didn't
5 reach, as you call it, an individual number for
6 damages that were acceptable to your understanding of
7 economics?

8 MR. PIXTON: Object to the form.

9 THE WITNESS: So I evaluated the models in
10 these cases. I think I raised issues with all of
11 them. There are portions of the reports that I may
12 have disagreed with, but in general, I think the
13 models that I've seen and have been asked to address
14 did not, in general, demonstrate a common method that
15 could be used to assign individual damages in the ones
16 I was asked to evaluate.

17 BY MR. MCNAMARA:

18 Q. Have you ever been asked to put forward a
19 damage model for consumers in a class action?

20 A. I've never developed the damages model in a
21 consumer class action.

22 Q. Have you ever affirmatively put forth a
23 damages model in any case?

24 MR. PIXTON: Object to form.

25 THE WITNESS: I have some -- in some of the

1 Q. Sure. My question --

2 I'll do it, Nancy --

3 -- is would you agree with me that this was a
4 report you made to respond to a damage model that
5 Dr. Eichmann had proffered -- Mr. Eichmann had
6 proffered regarding a price premium damage model for
7 purchases of ATVs with a heat defect?

8 MR. PIXTON: Object to form.

9 THE WITNESS: Yes, I believe I reference it
10 as an overcharge. I can look through it and see if a
11 price premium language is also used, but that would be
12 consistent.

13 BY MR. MCNAMARA:

14 Q. Would you agree with me that some of the same
15 statements you make about differentiated products and
16 differentiated consumer preferences and price
17 variation that you made in this expert report
18 regarding Mr. Eichmann's model in Polaris you make
19 again here in this case regarding GM?

20 MR. PIXTON: Object to the form.

21 THE WITNESS: I'd have to align the
22 statements up generally, but yes, price dispersion
23 does exist for both the ATV in the new and used
24 vehicle market. And, you know, prices are negotiated
25 and individualized due to some similar factors because

1 they're negotiated with a dealer. And I think those
2 points would be potentially common, although the
3 details of them are a bit different.

4 BY MR. MCNAMARA:

5 Q. Would that point be potentially common in
6 any -- purchase of any consumer product that there be
7 individual negotiation price?

8 MR. PIXTON: Objection form.

9 THE WITNESS: Generally, no. So, for
10 example, retail price -- you go to Walmart. You pay
11 whatever Walmart charges. But if we're talking about
12 things that are subject to individual negotiation,
13 yes, that's the case. So that would be -- many
14 different kinds of vehicles would be subject to
15 individual negotiation, at least at the time when you
16 could negotiate.

17 BY MR. MCNAMARA:

18 Q. So basically -- I'm sorry. Go ahead.

19 A. ATVs, automobiles I think certainly would be
20 the case. There's a lot of consumer products where
21 there's little or no negotiation or where there's
22 negotiation -- where negotiation isn't necessarily the
23 norm.

24 Q. So -- I'm sorry. I didn't mean to cut you
25 off. Mattresses, beds, would those also be one where

1 you'd have individual negotiation price?

2 MR. PIXTON: Objection. Form.

3 THE WITNESS: So that might be a situation
4 where you're blending -- again, I haven't fully
5 evaluated the mattress market, but that may be a
6 situation where you're blending both negotiated and
7 non-negotiated prices together.

8 BY MR. MCNAMARA:

9 Q. And trucks I think is another one you've
10 testified. When you're purchasing large diesel
11 trucks, there would also be price negotiation there
12 too; right?

13 A. Yes. And a few different kinds as well
14 because you're dealing with different kinds of market
15 participants.

16 Q. Can I ask you -- well, first of all, so if
17 that's the case that there's going to be, because of
18 the differentiation of products and price
19 negotiations, wouldn't that be the case that you can
20 never have a class action involving automobiles?

21 MR. PIXTON: Object to the form.

22 THE WITNESS: I don't know if I'd reach that
23 conclusion, but I can't evaluate the all possible ways
24 of going at this. But it does certainly make it more
25 challenging when you have preferences and individual

1 negotiations, that combination makes it more
2 challenging to evaluate individual impact because you
3 are in a situation where consumers can -- if they have
4 different preferences, they actually can act on them,
5 which is not the case for all goods. I don't know
6 what methods would be appropriate. But that's
7 certainly going to be a problem that you're going to
8 have to overcome in some way.

9 BY MR. MCNAMARA:

10 Q. Well, let me ask, Dr. Hitt, having done this
11 now for several years, what, if any, automobile case
12 would you ever see could have a damage model given
13 that there's always going to be different
14 heterogeneity in preference and different prices
15 because customers can negotiate?

16 MR. PIXTON: Object to the form.

17 THE WITNESS: So I can't anticipate the way
18 one might develop a damages model in here, but damages
19 models predicated on one or small sets of market
20 prices I think in a negotiated market with individual
21 preferences I think are less likely to be plausible.
22 I evaluated a specific one here. There might be
23 circumstances where that is not a strong a criticism.

24 But, again, I can't know all the possible
25 ways one might go about doing so, but it's certainly a

1 problem with the method to try to assign either one,
2 for example, diminution in value or a very small set
3 of changes in market prices when you know there's
4 customer heterogeneity.

5 BY MR. MCNAMARA:

6 Q. Can you think of one method that could be
7 used for determining damages to consumers of
8 automobiles that would meet your standard?

9 MR. PIXTON: Object to the form.

10 THE WITNESS: So I don't think I have a
11 standard. I'm pointing out the economic property of
12 these markets that would have to be incorporated or
13 should be incorporated in a model unless it could be
14 demonstrated that it's not sufficiently large to
15 matter. In these cases I think it does. I don't know
16 and I wasn't asked to determine is there an
17 alternative model. So I can't say.

18 BY MR. MCNAMARA:

19 Q. What do you mean "not sufficiently large to
20 matter"? What did you mean by that?

21 A. So if, for example, there was -- as an
22 empirical matter there was uniformity in price despite
23 heterogeneity in preference, that would be more
24 plausible. In general, that's not the case here, but
25 there could be, for example, negotiated markets within

1 some segments that had more uniformity in price. But
2 that does not appear to be the case here, and it's not
3 been the case in other situations that I've evaluated.

4 Q. Is it ever the case that there's uniformity
5 of price for automobiles?

6 MR. PIXTON: Object to the form.

7 THE WITNESS: Not that I personally observed.
8 But, again, with a small enough sub segment there
9 could be more uniformity with the sub segments. But,
10 again, it would be these very, very broad large
11 numbers of purchasers, multiple vehicles. It's
12 certainly less likely.

13 BY MR. MCNAMARA:

14 Q. Let me ask you if you could look at
15 Exhibit 319, Paragraph 25, of the report you did in
16 the Polaris case starting with "These types of
17 conditions."

18 A. Paragraph 25?

19 Q. Yeah. It's on page 13 of 152.

20 (The witness reviewed the document(s).)

21 THE WITNESS: Okay.

22 BY MR. MCNAMARA:

23 Q. And do you see where you write in the second
24 sentence, "A differentiated product is one that has a
25 variety of attributes (or 'features') intended to

1 appeal to consumers with different preferences"?

2 A. Yes.

3 Q. And can I ask you to look at your report that
4 you have in front of you? I think you brought it with
5 you. But it's Exhibit 318, paragraph 132, page 61 of
6 193, if you're looking at the PDF.

7 A. I'm sorry. What page?

8 Q. Page 61 of 193.

9 A. Got it. Thank you. Okay.

10 Q. Do you see in paragraph 132 where you're
11 talking about non-differentiated products that you
12 state in the third sentence, "A differentiated product
13 is one that has a wide variety of attributes (or
14 'features') intended to appeal to consumers with
15 different tastes and preferences"?

16 A. Yes. I like that phrase because I think it's
17 a compact treatment of what a differentiated product
18 is.

19 Q. Right. And given that we're not dealing with
20 the Model T, all cars are differentiated products;
21 correct?

22 MR. PIXTON: Object to form.

23 THE WITNESS: I think cars generally could be
24 considered differentiated products, so they would have
25 these potentials. They could have -- they would have

1 transmissions. That's one of the difficulties of
2 identifying the issue of transmissions, and I discuss
3 that also in my report.

4 But, yes, you can -- in general, with
5 differentiated products you get to observe what
6 consumers pay. They negotiate over what they pay.
7 What comprises the components that add up to what they
8 pay can vary across consumers.

9 So when faced with, for example, a
10 disclosure, there may be some consumers who react a
11 lot and some consumers who react very little because
12 they're not as concerned about it. That's just a
13 characteristic of differentiated products that you
14 need to accommodate in any attempt to try to value a
15 feature in a complex product.

16 Q. We'll do one more, and then we'll take a
17 break.

18 Can I ask you to look at the Polaris report,
19 paragraph 61.

20 A. Okay.

21 Q. In paragraph 61 when you're talking about the
22 transaction prices -- the actual transaction prices
23 vary even for similarly identical vehicles, and you
24 write in paragraph 61, "This price variation
25 establishes that there are individual characteristics

1 specific to each transaction that determine the
2 transaction price, which are difficult or impossible
3 to capture by a uniform or common model that would
4 apply to all Sportsman ATVs."

5 Did I read that correctly?

6 A. Yes.

7 Q. Could I ask you to look at paragraph 160 in
8 your current report in the GM case. The almost
9 penultimate sentence in your report that begins, "This
10 price variations establishes that there are individual
11 characteristics specific to each transaction that
12 determine the transaction price of a given putative
13 Class Vehicle, which are difficult to capture by
14 common model that would apply to all putative Class
15 Vehicles or even all putative Class Vehicles of the
16 same model model year"; correct?

17 A. Yes. That's an empirical fact with these
18 markets that I'm summarizing in this paragraph and the
19 following several pages of charts that basically
20 illustrate this in both reports.

21 Q. So it's your opinion in Johannessohn, as it
22 is in this case, that differences between customer
23 knowledge, customer prices paid, and customer
24 preference make a class-wide damages model -- preclude
25 a class-wide damages model; is that fair?

1 MR. PIXTON: Object to the form.

2 THE WITNESS: So I wouldn't say it that way.

3 I'd say that -- so a couple things. First of all,
4 preferences and information and transaction
5 circumstances yield prices. So the price variation is
6 observable. The preferences and information may be
7 less though because they're connected, but they're
8 not, by themselves, acting independently.

9 But the second point is that I think in both
10 these cases the idea that there is one or a very
11 limited number of price changes that can be -- that
12 accurately characterize any shift in demand in a world
13 which has all these properties is not likely to
14 capture the market properly.

15 BY MR. MCNAMARA:

16 Q. Let me try it this way: Fair to say, in both
17 the Johannessohn case and in the GM case, you cited to
18 the differentiation of the products, the preferences
19 of buyers, the differences in price, and the
20 differences in customer knowledge as a basis to oppose
21 the damage model set out by Mr. Eichmann?

22 MR. PIXTON: Object to form.

23 THE WITNESS: Again, subject to the
24 discussion I had earlier about some of these things
25 are based on graphs and some of these are based on

1 theory, but the -- but, yes, in both cases I identify
2 differentiation -- factors that affect differentiation
3 and price dispersion as issues that would affect the
4 plausibility of the models put forth by Mr. Eichmann
5 because they have -- they reduce the change in prices
6 to one or a very limited set of possible reactions.

7 BY MR. MCNAMARA:

8 Q. With regards to the opinion you just recently
9 testified on in Takata, did you also cite to
10 differentiation in the products, the customer
11 preferences, price variation, and customer knowledge
12 as a basis to oppose the damage model put forth by
13 that plaintiff's expert?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So I believe, again, Takata --
16 the Takata case is a vehicles case. It has the same
17 properties that would lead to that. And I did both --
18 there's both a theoretical and empirical discussion on
19 price dispersion and why that makes it challenging to
20 assign a single market price change.

21 BY MR. MCNAMARA:

22 Q. And in every automobile case you've been
23 involved with have you cited to price variation,
24 differentiation of products, differentiation of
25 customer preferences and customer knowledge as a basis

1 to oppose the damage model proffered by the
2 plaintiff's expert?

3 MR. PIXTON: Same objection.

4 THE WITNESS: I'd have to look back and see
5 all of these reports, but certainly those factors in
6 the auto cases -- are present in the auto cases that
7 I've been involved in, and they would lead to a
8 conclusion that a single or very small subset of
9 market price changes would not accurately capture
10 changes in behavior.

11 But, again, the details of each circumstance
12 are different. The analysis I did did vary across all
13 these reports. But as a general rule, differentiation
14 and product dispersion are features of these markets
15 that make it difficult to limit any kind of market
16 price reaction to a single or small set.

17 MR. MCNAMARA: Five minutes okay, Allen?

18 MR. PIXTON: Yeah. That's fine by me so long
19 as you're actually here in five.

20 MR. MCNAMARA: Yeah. I'm trying to get us
21 going for Nancy's sake. So five.

22 THE VIDEOGRAPHER: Please stand by. The time
23 is 11:35 a.m. We're going off the record.

24 (WHEREUPON a recess was taken from 11:35 a.m.
25 to 11:44 a.m.)

1 Q. What do you mean by corporate surveys?

2 A. Asking people factual questions about what
3 they do.

4 Q. Can I ask you to look at paragraph 8? You
5 mention your experience in the automobile industry.

6 A. Yes.

7 Q. Is it fair to say that the experience you
8 mention here is solely as a defense expert opposing
9 class actions as they pertain to automobiles, diesel
10 trucks, and ATVs?

11 MR. PIXTON: Object to the form.

12 THE WITNESS: So I don't view that
13 characterization as opposing necessarily, but these --
14 I think these are -- yeah. This paragraph is
15 specifically about litigation matters. I have done
16 other work that's related to auto industry, advising
17 students and such on their Ph.D. dissertations, for
18 example. But this paragraph is related specifically
19 to litigation.

20 BY MR. MCNAMARA:

21 Q. And the work you've done in the automobile
22 industry, you've always appeared on behalf of an OEM,
23 a manufacturer; is that fair?

24 A. I think I've been -- I don't know if I've
25 been retained by, but Bosch has been available. So

1 they're a parts supplier. I think other than that
2 exception it's been auto manufacturers or ATV
3 manufacturers, Polaris, if you count that as the auto
4 industry, and truck manufacturers if you're --
5 depending on how you define the boundary.

6 Q. Can you give me an estimate of the total
7 number of hours you've worked on cases involving
8 automobiles?

9 A. I have no idea.

10 Q. Is it in the hundreds? In the thousands?

11 A. Over the last 20-something years certainly
12 hundreds. I don't know whether it would creep into
13 thousands or not.

14 Q. Okay. Let me ask -- I'm going to be brief on
15 this one, I promise. Can I take you to paragraph 19
16 where you write, "I am being assisted in this matter
17 by staff at Cornerstone Research who are working at my
18 direction."

19 Is that the people we've already talked
20 about?

21 A. Yes.

22 Q. Okay. Do you know collectively how many
23 hours they have worked on this project?

24 MR. PIXTON: Object to form.

25 THE WITNESS: No. As I mentioned before, I

1 defect. You need to establish that that is indeed
2 common if you're going to assign everybody the same
3 number, because if they're not common, the same number
4 will overcompensate some people and undercompensate
5 others.

6 BY MR. MCNAMARA:

7 Q. And this paragraph you have here right
8 afterwards -- sorry, several sentences right after, I
9 just read it, that "automobiles are differentiated"
10 and it ends with "This makes any assumption of a
11 uniform impact or any assumption that all putative
12 Class members were damaged by some average amount (if
13 any) invalid, and thus individualized inquiry will be
14 necessary to determine whether each putative Class
15 member was impacted and separate damages."

16 That would apply to every single automobile
17 class action, would it not?

18 MR. PIXTON: Object to the form.

19 THE WITNESS: I think we discussed this
20 earlier. I think the differentiated product
21 characteristics do make it more plausible than not
22 that they're individualized. That may very well
23 extend to other automobile class actions, but I can't
24 speak for every one that could ever occur.

25 BY MR. MCNAMARA:

1 Q. And you've made this point in every
2 automobile class action you've been involved with; is
3 that fair?

4 MR. PIXTON: Form.

5 THE WITNESS: Yes. I've done the analysis in
6 the context that I've been asked to review, both
7 theoretically and empirically, and reached that
8 conclusion.

9 BY MR. MCNAMARA:

10 Q. That also includes the truck cases you're
11 involved with; correct?

12 A. I'd have to look through all the reports to
13 see if it's always there. The same principles apply.
14 I don't recall whether I did the empirical analyses in
15 some cases.

16 Q. You made the same point in the Johannessohn
17 versus Polaris case; correct?

18 A. That's correct. We were just looking at
19 that.

20 Q. Let me take you to page 11 of your report
21 now, the hedonic regression starting with Roman
22 numeral 6. Did you write this portion of your report
23 by yourself, or did you have any assistance from folks
24 at Cornerstone?

25 MR. PIXTON: Objection. Form.

1 Q. And did you -- this reply, did you work on it
2 with folks at Cornerstone?

3 A. Yes. Same research team.

4 Q. When you say "same," are they the same four
5 or five names before, or were there any ones in
6 particular?

7 A. It's the same general group. Again, I don't
8 know who did all -- you know, some of the analysis
9 might have been directed by the Cornerstone folks to
10 somebody else, but it was the same group that worked
11 with me on my original report.

12 Q. Okay. Then you see in paragraph 3 -- well,
13 just so I know, is this -- is there anything else that
14 you were preparing in response to Mr. Eichmann's
15 response, or is this it?

16 A. So I don't have any plans to prepare anything
17 else. Things could come up today, but I have no
18 active work right now other than this deposition.

19 Q. Fair enough. In paragraph 3 where you write,
20 "As just one example, for 2016, 2017, 2018 and
21 Cadillac CTS vehicles with 8 cylinder 6.2L,
22 supercharged induction engines, the additional data
23 show that all vehicles were sold with an at-issue
24 transmission, whereas Eichmann classified no vehicles
25 as being part of the Class."

1 Do you see that?

2 A. Yes.

3 Q. Do you know how many of those vehicles, the
4 raw number we're talking about?

5 MR. PIXTON: Object to form.

6 THE WITNESS: I can find it out. I don't
7 have it off the top of my head.

8 BY MR. MCNAMARA:

9 Q. Does 810 sound about right?

10 A. Let's find out.

11 Q. Sure. Just so I know, what are you looking
12 at?

13 A. My report.

14 (The witness reviewed the document(s).)

15 BY MR. MCNAMARA:

16 Q. Do we need to go off the record?

17 A. Maybe. Hang on a second here. I can't
18 remember whether I redlined it in the report or in the
19 appendix. It's taking a bit of time. I can't find it
20 right this second.

21 Q. Well, I'd say two things: One, you can
22 accept as a hypothetical the 810, or we should go
23 offline and you could --

24 A. Let's accept -- I have yet to find the page.
25 I'll accept it as a hypothetical and carry on.

1 Q. I think we talked earlier in terms of the
2 number of impressions were 5,548,082?

3 A. Something like that, yes.

4 Q. Would you agree that 810 out off 5,548,000
5 impressions, that's going to be a -- that's
6 .015 percent of the vehicles in the analysis?

7 MR. PIXTON: Object to the form.

8 THE WITNESS: If the calculation's -- if the
9 810 is correct. Yeah, about .015.

10 BY MR. MCNAMARA:

11 Q. Would you think that's a consequential issue
12 regarding the 810 vehicles that you point out here
13 would still be classified as not being part of the
14 class?

15 MR. PIXTON: Objection. Form.

16 THE WITNESS: So the point of this is not to
17 say how large these errors are. It's just to point
18 out these corrections do not address the fact that
19 some class vehicles are improperly classified.

20 BY MR. MCNAMARA:

21 Q. Okay. Let me ask you about the statement a
22 little further down. Do you see where you write in
23 paragraph 3 that, regarding the Chevy -- the 2019
24 Chevrolet Silverados, that even though the additional
25 data indicate that nearly 25,000 2019 Silverado

1 vehicles were sold with the at-issues, he did not
2 update his code to include that?

3 A. I'm not sure that's exactly what that says.
4 It just says he continues to -- the summary is he
5 continues to misclassify that particular make and
6 model year as --

7 MR. PIXTON: Objection. Form.

8 THE WITNESS: -- as entirely non-class
9 vehicles. But that's not correct, at least according
10 to the other data set.

11 BY MR. MCNAMARA:

12 Q. And do you know how many -- from the data
13 set, how many 2019 Silverados were gas-powered
14 8-cylinder 5.3 liter engines?

15 MR. PIXTON: Object to form.

16 THE WITNESS: Again, not off the top of my
17 head.

18 BY MR. MCNAMARA:

19 Q. Do you know, of the count of them that were
20 gas-powered, 8-cylinder 5.3 liter engines, that had
21 either an AL45 or AL90?

22 MR. PIXTON: Object to form.

23 THE WITNESS: Again, I could look up the
24 numbers in the source data sets, but I don't have
25 those off the top of my head.

1 BY MR. MCNAMARA:

2 Q. Could it be 212,000?

3 A. I don't know the number. I could take your
4 word for it. I could potentially look it up to find
5 the page that I was hunting for before, but I don't
6 have that number off the top of my head.

7 Q. So if it turns out about 212,000 of these
8 Silverados were the 8 cylinder 5.3L -- 8L transmission
9 and 113 were the 2019 Silverados without the 8L
10 transmissions, would you agree with me that about
11 35 percent or so of the Silverados in this particular
12 model did not have the at-issue transmission, 113,326?

13 MR. PIXTON: Object to form.

14 THE WITNESS: So I don't know. I'd have to
15 take your representation of the input numbers. I'm
16 not even sure I follow your calculation. I think the
17 statement simply says that there exists 25,000
18 vehicles that are misclassified that we were unable to
19 identify even after the correction.

20 BY MR. MCNAMARA:

21 Q. Okay.

22 A. If you want me to work through the math, I
23 can.

24 Q. Let me try to make it simpler because I think
25 this one you can work through. Even my feeble brain

1 can do it.

2 If we're talking about 12,000 vehicles,
3 again, out of 5.5 million vehicles in regression, is
4 that about a .22 percent number of impression we're
5 talking about?

6 MR. PIXTON: Objection. Form.

7 THE WITNESS: 12,000 out of 5.5 million?

8 BY MR. MCNAMARA:

9 Q. Yeah.

10 A. It's going to have a leading 2, and it's
11 going to be a small number. It's possible.

12 Q. Sitting here today, how do you think, if at
13 all, that the reclassification of the 12,209 vehicles
14 out of 505 million observations would affect, if at
15 all, the regression results?

16 MR. PIXTON: Object to form.

17 THE WITNESS: I don't know. The objective is
18 not to say -- is not to identify the effect on a
19 regression. The analysis in this paragraph is simply
20 to document ongoing misclassification errors that were
21 reduced -- or result from the changes Mr. Eichmann
22 made in his classification code.

23 BY MR. MCNAMARA:

24 Q. It kind of sounds like Cornerstone were going
25 "You screwed up. You screwed up, and you screwed up."

1 THE WITNESS: Not on these two. Sorry. Not
2 on these two.

3 BY MR. MCNAMARA:

4 Q. Let me go back to your report, and I'm on
5 page 25, paragraph 62 where we're talking about I
6 think depreciation.

7 A. Page 25?

8 Q. Yeah.

9 A. Okay.

10 Q. Page 25.

11 A. In what paragraph?

12 Q. Well, in the sentence you're talking about I
13 think price depreciation and then compared to
14 benchmark vehicles.

15 A. Okay.

16 Q. Can you tell me what method you're using to
17 analyze alternative depreciation here?

18 MR. PIXTON: Object to the form.

19 THE WITNESS: So the method is just -- first
20 I depict the data, and I depicted both for this
21 particular one and all the others so you can see, just
22 from the simple presentation of the data, that these
23 vehicles are not consistently at the bottom of their
24 group, and then it bounces around over time. So there
25 doesn't seem to be any systematic relationship

1 apparent when you compare these against the relevant
2 control groups.

3 BY MR. MCNAMARA:

4 Q. Are you using a multivariant regression
5 analysis?

6 A. No. I'm presenting the data as is available
7 just looking at the depreciation for each model
8 individually. And there's like 40 others in the
9 appendix that -- where we do each one individually.

10 Q. Right. And for these -- the analysis that
11 you're doing here, is it fair to say you don't control
12 for mileage. Fair?

13 MR. PIXTON: Object to form.

14 THE WITNESS: It's presenting it -- there's
15 no controls in here. It's looking at the population
16 of these vehicles relative to other vehicles at the
17 time and showing that they're within -- sometimes
18 high, sometimes low, sometimes at the bottom,
19 sometimes at the top, and it doesn't seem to be
20 particularly related to the share of at-issue
21 transmission.

22 BY MR. MCNAMARA:

23 Q. And you said there's no control here. It
24 says you don't have control here for -- I'll wait for
25 it -- geographic location of sale, sale month and

1 year, sale type, body type, engine cylinders, engine
2 liters, trim attributes like extended cab, induction
3 type, dealer sale or sale type repossession, none of
4 those are controlled for in here?

5 MR. PIXTON: Object to form.

6 THE WITNESS: So I believe certain
7 vehicles -- let's see. So certain vehicles are --
8 certain portions of the data set are removed, salvaged
9 vehicles, so forth. But it's a presentation of the
10 average values of these vehicles over time relative to
11 their stated MSRP. It's a different kind of analysis.

12 BY MR. MCNAMARA:

13 Q. Okay. In terms of answering my question,
14 because you threw in things I didn't ask, the items I
15 listed that weren't controlled -- mileage, geography,
16 sale months, sale type, body type, engine cylinders,
17 engine liters, trim attributes like extended cab --
18 would you agree none of those are controlled for in
19 the analysis you're doing here or discussing here on
20 page 25?

21 MR. PIXTON: Object to form.

22 THE WITNESS: I'd have to go through that
23 list very specifically, but I can tell you what this
24 is is simply a presentation of the average values of
25 each at-issue vehicle compared to its benchmarks. And

1 so in that sense there are no controls and there's no
2 intention of putting in controls because it's a
3 presentation of the data so you can see how these
4 vehicles behave relative to others in the similar
5 segment.

6 BY MR. MCNAMARA:

7 Q. Did you do this, or did someone at
8 Cornerstone do it?

9 MR. PIXTON: Object to form.

10 THE WITNESS: So I requested that they
11 present the data, just show a simple data presentation
12 of how these vehicles compared. The implementation of
13 that was done by Cornerstone.

14 BY MR. MCNAMARA:

15 Q. And who at Cornerstone?

16 MR. PIXTON: Same objection.

17 THE WITNESS: I don't know.

18 BY MR. MCNAMARA:

19 Q. Can I take you back a little bit to page --
20 well, let me ask you the question because we talked
21 about omitted variable bias earlier.

22 In light of what you discussed, aren't you
23 omitting a ton of variables in this analysis?

24 MR. PIXTON: Objection. Form.

25 THE WITNESS: Omitted variables bias is a

1 involved in were particularly narrow, but I don't
2 know out of all possible situations.

3 BY MR. McNAMARA:

4 Q. Tell me the narrowest class action you
5 could think of here that would not have the same
6 issues regarding customer preference.

7 MR. PIXTON: Object to the form.

8 THE WITNESS: You would have to have
9 something that is pretty limited, basically
10 purchased in the same channels and similar channels
11 with similar vehicles, and I can't think of any
12 class actions that have had that characteristic
13 but, again, my experience is limited to the ones
14 I've been involved in.

15 BY MR. McNAMARA:

16 Q. I'm going to dare to try. Let's
17 assume you could buy a Tesla model A. It's the
18 only version of Tesla they have. There's no
19 differences in trim. There's no difference in
20 model year. It's all the same componentry and
21 you can only buy it directly from Tesla but it
22 has a defect. Is that a class action that
23 Lorin Hitt would say you could do a damages
24 model for?

25 MR. PIXTON: Object to form.

1 THE WITNESS: So I don't know if I -- if
2 I would characterize it that way. I can say, you
3 know, in a world where one dealer, one vehicle, no
4 price negotiation, you're more in a world there --
5 in general, Tesla doesn't negotiate. So you might
6 be in a world where it's more possible to put all
7 those vehicles in the same market and, therefore,
8 you could do something more general but, you know,
9 without having seen the model and the approach, I
10 can't be sure.

11 BY MR. McNAMARA:

12 Q. Wouldn't you still have heterogeneity
13 in the preference of the customers? Some would
14 still value, you know, the pick some parts of
15 that one model Tesla differently than others?

16 MR. PIXTON: Form.

17 THE WITNESS: Potentially. That could be
18 an empirical question.

19 BY MR. McNAMARA:

20 Q. Let me get you now to the other issue
21 you mentioned here in terms of differences in
22 the customers that Mr. Eichmann -- I'm on 63
23 now -- incorrectly assumes that all punitive
24 class members would place significant value on
25 the transmission feature.

1 question?

2 BY MR. McNAMARA:

3 Q. This is dated October of 2018.

4 A. Yes. That is correct.

5 Q. And you also mention in the paragraph
6 we just read, 146, that customers may get
7 information based upon online forums -- forum
8 comments, that they may have had some
9 information about the transmission issues from
10 those online forums. Is that fair?

11 A. Let me go back to my report and I'll
12 look. What paragraph?

13 Q. 146.

14 A. Okay.

15 Q. Actually, before we go there, let me
16 go to Exhibit 220. It's also already in your
17 Exhibit Share. Do you see --

18 A. Yes. There it is at the bottom.

19 Q. This is a reference to another TSB
20 16-NA-361.

21 A. That's what it appears to be.

22 Q. And it says, also from Mark Gordon,
23 "Steve, 16-NA-361 applies only to the 8-speed
24 transmission. The first 1-2 shift of the day is
25 influenced by air within the clutch at startup

1 after the vehicle sits for an extended period,
2 typically overnight."

3 "The harshness is even worse" -- "is
4 worse on vehicles that are driven at slow speeds
5 (subdivision) driving during that first shift."

6 Do you see where it says below that
7 "Engineering has attempted different strategies
8 with calibration to mask/improve the shift.
9 Unfortunately, none of these strategies have been
10 effective and customers continue to experience
11 harsh 1-2 shift."

12 Do you see that?

13 A. Yes.

14 Q. And then he continues, "Hardware and
15 calibration changes for the second generation 8
16 speed will address this and other 8-speed
17 issues."

18 Did I read that right?

19 MR. PIXTON: Object to the form.

20 THE WITNESS: I believe so.

21 BY MR. McNAMARA:

22 Q. And then it states, "Unfortunately,
23 these changes will not take place until model
24 year 2022 for the midsize truck and model 23
25 for the remaining 8-speed applications."

1 Do you see that?

2 MR. PIXTON: Form.

3 THE WITNESS: Yes, I think that's what it
4 says.

5 BY MR. McNAMARA:

6 Q. And then it says "GM confidential"
7 next to that, right?

8 MR. PIXTON: Object to the form.

9 THE WITNESS: That's in parenthesis
10 following the passage you just read.

11 BY MR. McNAMARA:

12 Q. Okay. And can do you know what GM
13 confidential means?

14 MR. PIXTON: Same objection.

15 THE WITNESS: I don't have any knowledge
16 other than the plain language meaning.

17 BY MR. McNAMARA:

18 Q. I'm going to share screen with you.
19 Can you -- whoever can, can you change it so
20 that I can share screens? Can the concierge do
21 that?

22 THE VIDEOGRAPHER: You can try now.

23 MR. McNAMARA: Thank you. While we're
24 chatting, I went on line and you know what I could
25 actually find 16-NA-361. This one's dated April of

1 2017. Let me just make sure it's not too far off
2 from this email. Let me see if I can find a later
3 one. Oh, that one is from August of 2021.
4 Terrible version of it. This is what happens when
5 you do this on the fly, huh?

6 This is from the Corvette center. It
7 says 16-NA-361. And I'm scrolling it down with
8 you. I could be wrong here but let me see, does it
9 mention anything about we'll have a fix with model
10 year '23?

11 MR. PIXTON: Object to the form.

12 BY MR. McNAMARA:

13 Q. It doesn't appear, correct?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: At least in the portion
16 that I can see now, it doesn't. Well, let's see,
17 what does it say up at the top? Keep going down.

18 BY MR. McNAMARA:

19 Q. It looks like it hasn't been revised
20 in quite some time?

21 A. Yep.

22 Q. So if -- as of today, do you know if
23 any current or potential GM buyers of the model
24 year '15 to oh, heck, '22 vehicles know that a
25 generation 2 redesign to address harsh shifts is

1 forthcoming?

2 MR. PIXTON: Object to the form.

3 THE WITNESS: I don't know one way or the
4 other. I think there are places where they're
5 discussing issues broadly. I don't know if that
6 particular fact is included in them.

7 BY MR. McNAMARA:

8 Q. So if customers looked at TSBs that
9 will mention a problem, they will not
10 necessarily get very much information about the
11 frequency of the problem, the cause of the
12 problem and whether -- and when GM will have a
13 permanent solution to the problem. Is that
14 fair?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So this isn't something I
17 have done an analysis of, about what the content
18 and what people can infer but in the documents you
19 showed me, at least within those, they didn't --
20 none of those specifics were not present on some of
21 the documents.

22 BY MR. McNAMARA:

23 Q. And you mentioned in your report that
24 customers -- one of the flaws that Mr. Eichmann
25 did, is he didn't -- he didn't take into account

1 that persons could get information about these
2 defects from TSBs, correct?

3 MR. PIXTON: Object to the form.

4 THE WITNESS: So that's a little more
5 narrow reading of my report. My report describes
6 is that customers could become aware of these
7 issues from information in the public domain, of
8 which TSBs is one, and which there were others as
9 well, and I believe plaintiffs identified the
10 number of the places where you could find
11 information.

12 BY MR. McNAMARA:

13 Q. Right. We identified forums and TSBs
14 and public information and complaints that says
15 it's a problem, which probably affects
16 diminution of value but we didn't know what.

17 So do you see there's a material
18 difference between knowing that, hey, there's
19 transmission issues and exactly what it is and
20 whether there's a fix and when it might come? Do
21 you see the difference between those things?

22 MR. PIXTON: Object to the form.

23 THE WITNESS: They could potentially be.
24 That's not something I tried to evaluate in this
25 case, as to what specific information, beyond the

1 fact that it was in the public domain was there.

2 So I can't say.

3 You know, from plain language, they are
4 different information but how consumers react, that
5 I did not fully investigate except to identify that
6 it was -- that there was information out there.

7 BY MR. McNAMARA:

8 Q. Okay. Can I ask you to look at
9 Exhibit 77?

10 And while he's doing that, Solomon, can
11 you give me a time check?

12 THE VIDEOGRAPHER: One second, please.

13 6:15.

14 BY MR. McNAMARA:

15 Q. Good to know. We will be done by
16 6:45, if not sooner, my time.

17 So have you looked at Exhibit 77 before?

18 A. Still waiting for the spinning circle.

19 Q. I'm sorry. It should have been in
20 your folder already. I already put it in there.

21 A. Exhibit?

22 Q. It should say Exhibit 0077. It should
23 be towards the top.

24 A. There it is, yes.

25 MR. PIXTON: Doug, are you planning to

1 pick back up over here where Mr. Goodrich
2 conveyed to Tadge and Ms. Briedis, "Due to the
3 extremely high rate with the midsized truck, we
4 are expediting the fix in the 238 millimeter
5 converter for model year '19. However, we have
6 the supplier working to implement a similar fix
7 in the larger 258 converter for the Corvette and
8 other performance vehicles, as well as
9 full-sized trucks. Timing is still being worked
10 out but the plan would be to back service all
11 previous model years once implemented for
12 production. My expectation is this will likely
13 a running change for model year '19."

14 Can I now take you to Exhibit 84? It
15 should be in there but just -- to, again, move
16 things along, if you want to look at it, you can.
17 It is in your exhibit share but I'm also sharing it
18 on the screen.

19 MR. PIXTON: Object to the form.

20 THE WITNESS: Let me look at it briefly.
21 Sorry. I got -- 84?

22 BY MR. McNAMARA:

23 Q. Yeah.

24 A. Let me look through it and then I'll --
25 okay.

1 Q. And if you can, can you review the
2 answer that Al gives to the question we looked
3 at in the email, "Al, can you please shed some
4 light on what's going on with our cars in the A8
5 torque converter shudder issue and whether there
6 is any permanent fix to the issue?" Thank you.

7 MR. PIXTON: Object to the form.

8 THE WITNESS: Okay. Got it.

9 BY MR. McNAMARA:

10 Q. Would you agree with me the answer
11 that's posted here in the forum, there is no
12 reference to the extremely high warranty rates
13 that Mr. Goodrich had mentioned?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So I don't see anything
16 specifically about warranty rates. I think it's
17 just describing the fix and the conditions under
18 which they think the fix is appropriate.

19 BY MR. McNAMARA:

20 Q. Well, is there any mention of the --
21 the fix that was intended to be in place for
22 model year 2019 in this post?

23 MR. PIXTON: Object to the form.

24 THE WITNESS: I don't see any -- well,
25 it's hard to say because I don't know what fluid

1 they would be using. I don't see any reference to
2 a 2019 fix, though.

3 BY MR. McNAMARA:

4 Q. Well, would you agree with me that, in
5 fact -- you see here where it says -- not so
6 much. "Since we started using Dexron HP
7 transmission fluid in March of 2017, both in
8 production and for service, we believe we have
9 basically eliminated the shudder. When used for
10 service, it only requires a single flush and
11 fill."

12 Do you see that?

13 MR. PIXTON: Object to the form.

14 THE WITNESS: Yeah. That appears to be
15 what the text says.

16 BY MR. McNAMARA:

17 Q. And based upon what you know and what
18 you just read, is that accurate?

19 MR. PIXTON: Object to the form.

20 THE WITNESS: So I'm not in a position to
21 assess that. I understand they were working on a
22 solution and they came up with a more permanent fix
23 later on. That's all I understand. I don't know
24 what they're specifically referring to here, and
25 I'm not really in a position to evaluate the

1 efficacy of their various fixes. I only know
2 broadly what the history was.

3 BY MR. McNAMARA:

4 Q. Okay. Do you think Mr. Goodrich was
5 in a position to estimate whether this
6 information conveyed here was accurate?

7 MR. PIXTON: Object to the form.

8 THE WITNESS: I can't -- I understand
9 Mr. Goodrich was quite knowledgeable of these
10 issues, but I can't ex post evaluate what he would
11 and wouldn't know.

12 BY MR. McNAMARA:

13 Q. My computer just froze.

14 Well, let me take you back to an exhibit
15 we looked at a little earlier, that of
16 Mr. Goodrich's testimony. It was Exhibit 3, Tab 3,
17 and I will try to move this along as quick as
18 possible. And I'm going to take you there and
19 we're going to go to page 220 of his testimony.
20 It's on page 56 of 22 of his transcript.

21 A. Which exhibit number is that?

22 Q. It's Exhibit 3, Tab 3.

23 A. Got it. I see it. Thanks. What page?

24 Q. It looks like it's page 57 of 22 of
25 his -- of the document.

1 A. Oh, okay. Got it. Not the deposition
2 page?

3 Q. Right. It's 220 of the deposition
4 page. And do you see here where some guy asks:

5 "In the -- in Al's answer in Exhibit 84.
6 If you look at the third paragraph."

7 "It eliminate most of the shudder
8 concerns."

9 "Now, if you go a little further down, do
10 you see" -- it is the second to last sentence --
11 "Since we started using Dexron HP transmission
12 fluid in March 2017, both in production and for
13 service, we believe we have basically eliminated
14 the shudder. When used for service, it only
15 requires a single flush and fill." It looks like I
16 stuttered there. Some guy objected. He's not
17 important.

18 And then the answer says "I think, um, I
19 don't know what basically eliminate is. It, it we
20 know it didn't. It wasn't 100 percent. I think
21 the frequency went down considerably, especially,
22 um, with the newer vehicles, but that's -- that's
23 not how I would have worded it."

24 And I asked "Well, if that were true,
25 there wouldn't have been a need for Mod.1.A, right?

1 You could have followed up shop on the meetings
2 with Mr. Baran and Mr. Nitz a long time ago,
3 correct?"

4 Objection to form.

5 "Yeah, basically eliminated may be a
6 little, a little optimistic. Again, Camaro was not
7 seeing a high frequency anyway. But maybe that was
8 his understanding. I can't speak for Al."

9 So while you're not in a position to
10 evaluate whether this information put in this
11 public forum that said that GM had basically
12 eliminated shudder in 2017 and early 2018, would
13 you agree that Mr. Goodrich's assessment of that
14 would be one that it was overly optimistic to say
15 that after changing the new transmission fluid in
16 March of 2017, they had basically eliminated
17 shudder?

18 MR. PIXTON: Object to the form.
19 Misstates.

20 THE WITNESS: I think -- what does he say
21 specifically? I think he says he wouldn't have
22 worded it that way. I think that's his actual
23 language. I don't have any reason to dispute that.

24 BY MR. McNAMARA:

25 Q. So let me go back to your report in

1 paragraph 147.

2 And, again, this is where you mentioned
3 the different sources where customers may have
4 gotten potentially information, different
5 information about the -- the shudder issues that
6 could affect -- or the shift or shudder issues that
7 could affect the vehicles.

8 If it turns out that GM did not publicly
9 disclose that it didn't have a fix for the shift
10 quality until 2023 and that the information in the
11 TSBs and the forums did not include factual
12 information about TCC shudder -- TCC shudder, then
13 what is the point of the individualized inquiry
14 you're mentioning here in paragraph 147?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So while we reviewed some
17 certain specific communications, the issue is you
18 don't know what consumers knew and what opinions
19 they may have formed about this. Consumers who are
20 more informed about this were especially concerned
21 about it could respond by, for example, buying
22 something else or negotiating harder for these
23 vehicles.

24 And so the question is, when faced with a
25 variety of sources of information, some incomplete,

1 maybe some were more complete and from different
2 sources, consumers individually access different
3 amounts of the information and then they may
4 respond to them in different ways.

5 And so consumers who saw, for example,
6 that there might have been an issue and decided to
7 pursue that further and came to the conclusion that
8 this might be a problem for them, might be willing
9 to either -- might be more concerned and pay less
10 and consumers who are indifferent to it or collect
11 this information may not be -- may not have been as
12 affected.

13 But that evaluation is something that
14 can't be done broadly without looking at what, you
15 know, consumers know, what they accessed and
16 different -- this could impact different consumers
17 in different ways. That's the point.

18 BY MR. McNAMARA:

19 Q. Right. My point is if the actual
20 information about the defects and if and when
21 any repairs was never released to the public,
22 there is no point to do an inquiry to find out
23 what would have happened to this consumer in the
24 but-for world if GM did tell the information?
25 If GM has never publicly disclosed what it knows

1 about the ATF, that there is a fix out there.
2 If customers show up for it, we have the root
3 cause and we have the solution if you come on
4 down, and if GM still has not disclosed to the
5 public shift quality problems persist and
6 they're going to until we make a major redesign
7 in model year '23, what are you talking about
8 this individual inquiring except maybe they
9 picked up fragments of information about
10 transmission issues from different sources?

11 MR. PIXTON: Object to the form.

12 THE WITNESS: The question is what
13 information they had when they were making their
14 decisions, and certainly this information was being
15 communicated on forums, which is why GM presumably
16 responded to it in various ways.

17 And the issue becomes if one were trying
18 to make it, for example, a comparison of a
19 disclosure and what was in the public domain for
20 doing some kind of -- for using this information
21 event as an event, for example, in a difference in
22 difference, that contrast would be something that
23 would be, you know, important to investigate.

24 What I'm stating here is simply that some
25 of this information was in the public domain.

1 There are examples of it. Maybe conflicting
2 information, maybe incomplete information, but how
3 consumers react to that is going to affect what the
4 prices are that are paid and that may be different
5 across consumers because different consumers engage
6 in different seeking information.

7 BY MR. McNAMARA:

8 Q. I think this information is doing a
9 lot of work here. No information about what GM
10 had, about its specific defects that it knew,
11 did it convey to the customers. It gave -- it
12 has a TSB out there that says, if you have
13 shudder, come on down. Actually, it doesn't
14 even go to the customers, it goes to the
15 dealers. And it has information that's GM
16 confidential about a major redesign.

17 What you're talking about is fragments of
18 information customers may have about problems and
19 if they go on a forum, they're told, we've
20 eliminated it back three years ago before they had.
21 Isn't that true?

22 MR. PIXTON: Object to the form.

23 THE WITNESS: I think that -- again, some
24 of the things that you showed me would be of the
25 forum where they've made specific statements about

1 the likelihood that it would be fixed, but there is
2 information, you know, for example, customers
3 clearly were discussing this on these forums, and
4 so it is not required that GM initiate this kind of
5 information in order for customers to become aware
6 that there could be an issue, for example.

7 And my statement is simply that
8 consumers -- you know, there was discussion of this
9 in the public domain that would have affected
10 consumers decision-making and that could affect
11 some consumers differently than others and the only
12 way to know is to get an understanding of what
13 consumers actually knew.

14 BY MR. McNAMARA:

15 Q. The only question I have for you about
16 what you just said is about "GM's obligation."
17 What did you mean by that?

18 MR. PIXTON: Object to the form.

19 THE WITNESS: I'm not sure I said "GM's
20 obligation." I think GM communicated information.

21 BY MR. McNAMARA:

22 Q. Right.

23 A. I wouldn't -- again, I'm not attempting
24 to assess what an appropriate disclosure would be
25 and whether the communications that they have made

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.



Nancy J. Martin, RMR, CSR

Dated: December 28, 2021

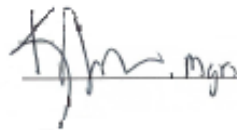
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C E R T I F I C A T E

I, Monice K. Campbell, a duly
commissioned and licensed court reporter, do hereby
certify: That I reported Volume 2 of the
deposition of the witness, Lorin Moultrie Hitt,
Ph.D., commencing on Wednesday, December 22, 2021,
at 10:10 a.m.;

That prior to being examined, the witness
was sworn to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript of
said deposition is a complete, true, and accurate
transcription of said shorthand notes.

I further certify that I am not a relative or
employee of an attorney or counsel or any of the
parties, nor a relative or employee of an attorney or
counsel involved in said action, nor a person
financially interested in the action.



Monice K. Campbell, CCR, RPR, CRR